IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc. Civil Application (Arbitration) No.520 of 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's orders**

Coram : R.C. Chavan, J.
Dated : 8th December, 2006

1. By this application, the applicants, some of the vendors in sale-deed dated 18-8-2005, state that there is an arbitrable dispute between them and the non-applicants, builder and remaining vendors, which in terms of clause 19 of the said sale-deed, is required to be referred to arbitration.

2. I have heard Shri S.P. Kshirsagar, the learned counsel for the applicants, Shri M. Anil Kumar, the learned counsel for respondents No.1 to 5, and Shri N.K. Ambilwade, the learned counsel for respondents No.6 to 9.

3. According to the learned counsel for the applicants, the manner of payment has been enumerated in clause 1 of the sale-deed. It recites that the vendors had acknowledged receipt of a sum of Rs. 67.50 lacs, as enumerated therein. It seems that a Civil

Suit bearing No.218 of 2005 was filed on behalf of applicant No.3 Sanjay against respondents No.5 to 9 and other heirs of Hemraj. In a Memorandum of Understanding dated 21-6-2005, the applicants, had agreed to obtain relinquishment-deed from respondents No.6 to 9 and if they failed to do so, they were to be permanently restrained from depositing a cheque of Rs.22.50 lacs issued by the builder. Party No.2 to this Memorandum of Understanding, i.e. respondent No.1 builder, claimed to have disbursed a sum of Rs.22.50 lacs to respondents No.6 to 9, which the learned counsel for respondents No.6 to 9 does not dispute. Respondents No.6 to 9 executed a deed of confirmation on 21-12-2005, on having received their share of consideration.

4. The learned counsel for the applicants contends that respondents No.6 to 9 were not entitled to receive any amount. They had executed a power of attorney in favour of applicant No.2 Narayan and, therefore, Narayan alone was supposed to receive the consideration under the sale-deed dated 18-8-2005. Under the Memorandum of Understanding, Narayan and the other applicants were to get a relinquishment-deed from respondents No.6 to 9. Therefore, the builder/respondent No.1 had no business to directly

transact with respondents No.6 to 9. Therefore, according to him, an arbitrable dispute exists between the parties to sale-deed dated 18-8-2005.

5. I have carefully considered these contentions. The dispute, if any, is between the persons, who are described as party No.1, and not between party Nos.1 and 2. The sale-deed dated 18-8-2005 does not make a reference to the Memorandum of Understanding dated 21-6-2005. Therefore, the terms of Memorandum of Understanding dated 21-6-2005 need not be read into the sale-deed dated 18-8-2005. The question whether there is an arbitrable dispute, has to be decided only with reference to the sale-deed dated 18-8-2005. Since the parties, whose names appear at 1(v) to 1(viii), i.e. party No.1, to the sale-deed dated 18-8-2005, admit having received a sum of Rs.67.50 lacs, it cannot be said that there is a dispute about non-receipt of Rs.35 lacs between party No.1 and party No.2. The dispute is inter se between parties at 1(i) to 1(iv) and 1(v) to 1(viii). The question of entitlement of parties at 1(i) to 1(iv) or 1(v) to 1(viii) to receive this amount is not one, which would be covered by Clause 19 of the sale-deed. Since there is no arbitrable dispute between party No.1 and party No.2 to the sale-deed dated 18-8-2005 in order to enable the applicants to invoke jurisdiction of this Court, the

disputes, inter se, between various constituents of party No.1 could be resolved by appropriate proceedings and not by arbitration, as contemplated by Clause 19 of the sale-deed.

6. Consequently, the application is dismissed.

JUDGE.

Pdl.